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THE ROLE OF PARLIAMENTS  
AGAINST TERRORISM

Donald Macdonald

Law and Government Division  
Research Branch  
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THE ROLE OF PARLIAMENTS AGAINST TERRORISM

THE PROBLEM OF TERRORISM

Terrorism is, quintessentially, a problem which requires international cooperation. A large degree of political violence takes place in the context of international transport, or against diplomatic personnel. It is only through domestic laws enforced in a manner which guarantees international uniformity, that such terrorism can effectively be dealt with. In the absence of consistent and unified international action, even the strongest and most comprehensive laws against terrorism can come to naught.

A principal obstacle to effective international action against terrorism is a lack of agreement as to what acts do, and what acts do not, fall within the term. The maxim is trite, but it aptly reflects the political and moral confusion which enshrouds the matter: "One man's terrorist is another man's freedom fighter". Some countries, particularly those which are former colonies, or which find themselves in positions adversarial to those of developed countries, will not tolerate a definition of terrorism which restricts itself to merely identifying the term by reference to political violence - since many of those countries in fact attained independence through the very use of such violence. It is also claimed that attention should be paid to acts of "state terrorism" - institutionalized violence by sovereign states against their own citizens, or violent acts directed at neighbouring countries. On the other hand, many nations are strongly opposed to a restriction of the definition of terrorism to exclude "justifiable" violence, since this would render the term (at least for purposes of international cooperation) virtually meaningless, in the sense that any country which would wish to avoid having to take action to prosecute or otherwise deal with terrorists could rely on such a flexible



definition. Further, it is submitted that some tactics, and some targets, of political violence are unacceptable, no matter how justified the cause, or how extreme the provocation.

For many years, the international community has been split by these divergent views on terrorism. In 1973 the General Assembly of the United Nations established an Ad Hoc Committee on terrorism. At the insistence of a number of countries, the Committee was instructed to pay heed to "self-determination", the legitimacy of "national liberation movements", and the need to examine the causes of terrorism. A report issued by the Committee in 1979 is illustrative of the divergent views of its members, who were unable to reach a consensus on many issues. One group of nations thought that terrorism could only be abated by attacking its root causes, and that, indeed, much of what is known as "terrorism" is a justified response to repression.

The international community could not fail to recognize the yearning desires of all oppressed people of the world to regain their political, economic and social freedoms, nor fail to condemn all acts of economic exploitation, political serfdom, the obnoxious policies of apartheid and racial discrimination in all its forms and shapes. The view was also expressed that identifying resistance against such terror with terrorism could only be construed as an attempt to defend obsolete international and social relations and to discredit and impede the just and legitimate struggle of oppressed peoples for freedom and independence and against all forms of relations based on domination and the denial of rights. The genuine struggle of oppressed peoples for liberation and equal rights, it was stated, actually constituted a negation of terrorism, violence and subjugation; it was an attempt to gain respect for human rights and the establishment of a just legal order.(1)

Another group of countries took the view that the U.N. should be able to come to some agreement as to the inadmissibility of some methods and tactics of terror, even if carried out by those engaged in a just struggle.

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(1) United Nations, Report of the Ad Hoc Committee on International Terrorism, General Assembly, Thirty Fourth Session, New York: 1979, Supplement No. 37 (A/34/37), p. 9.



Some delegations, however, maintained that while it was one of the primary tasks of the international community to assist persons who were denied their fundamental rights and freedoms in regaining their rights, the use of force against innocent people was not an appropriate means for achieving this end and that oppression could be resisted by violent means without resorting to terrorism. It was also said that commitment to the principles embodied in the Charter, the Universal Declaration on Human Rights and other international instruments meant that acts of terrorism which were in direct contravention of those principles had to be condemned without exceptions. The view was further expressed that just as the use of freedom for the purpose of destroying freedom was unacceptable, the freedom to use inhuman means to achieve utopian humanism was to be repudiated. The brotherhood of survivors, it was added, could not serve as an ideal for a just and peaceful society.(1)

This is not to say that there has been no consensus on some elements of the problem. Terroristic acts have become a significant problem, and when their objects become diplomats, innocent civilians, or particular means of transportation there is less reluctance to act. Thus, there has been a significant amount of concerted international action on a number of discrete matters. As one commentator has noted:

[When] attempts are made to condemn terrorist acts and to designate them criminal by way of an international instrument, the general practice nowadays is to abandon the search for a comprehensive treaty condemning terrorism as such. Instead, the tendency is to seek out a particular type of terrorism, such as acts of violence against aircraft or diplomats or the taking of hostages, and draft a text regarding this type of activity in the hope that it will be generally acceptable to governments. Such a project is perhaps more realistic than a comprehensive treaty, and it leaves the way open for action which may be stimulated when some particular act of terrorism arouses general condemnation.(2)

To date this international cooperation and agreement has been fragmented.

Recently, however, the United Nations has shown signs that there may be a prospect for more concerted action against terrorism. In

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(1) Ibid.

(2) L.C. Green, "International Law and the Control of Terrorism", (1983) 7 Dalhousie Law Journal, 236 at pp. 238-239.



addressing the General Assembly in June 1985, on the occasion of the fortieth anniversary of the founding of the U.N. Secretary General de Cuellar made the following remarks:

In these past days and weeks, the world has faced repeated instances of terrorism in the form of bombings, hijackings and the taking of hostages. The victims have been hundreds of innocent people who have harmed no person and no cause. Mere condemnation of such acts is insufficient. Effective international action is required. Resolutions and conventions have been adopted in the past by the General Assembly and the International Civil Aviation Organization, outlawing hijackings and the taking of hostages. These provide a vital framework for counter-measures. It is tragically evident, however, that new, multilaterally co-ordinated efforts are urgently required to deal with this terrible phenomenon, which is beyond the capacity of any one country to handle alone.(1)

In addition, in December 1985 the United Nations General Assembly, for the first time, unanimously agreed to a resolution condemning terrorism, and calling on member nations to take certain actions to combat it. The resolution expresses the Assembly's "deep concern ... about the world wide escalation of acts of terrorism in all its forms, which endanger or take innocent human lives, jeopardize fundamental freedoms and seriously impair the dignity of human beings", and its conviction that bilateral and multilateral cooperation is necessary to eliminate terrorism and its underlying causes.(2) It appeals to states that have not yet become parties to existing international conventions on various aspects of terrorism to do so, and urges the "harmonization of domestic legislation with those conventions, the fulfilment of international obligations, and the prevention of the preparation and organization" of acts directed against other states. It also calls upon all states to refrain from "organizing, instigating, assisting or participating" in terrorist acts, or acquiescing in activities directed towards the commission of such acts, and not to obstruct the application of "appropriate law enforcement measures". The resolution also makes reference to:

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(1) United Nations Chronicle, (1985), Volume 22, p. 14.

(2) A copy of the draft resolution is appended.



- Cooperation and the exchange of information on the prevention of terrorism, and on the apprehension and prosecution of terrorists; and the inclusion of special clauses regarding extradition in treaties.
- The need to take appropriate measures recommended by the International Civil Aviation Organization to protect air transport.
- A proposal that the International Maritime Organization study the problem of terrorism aboard or against ships.(1)

In light of this new consensus on the desirability of cooperation to combat terrorism, the role of legislatures around the world is to turn the general principles enunciated by the U.N. into concrete tactics and laws. In so doing, legislators must pay heed to their country's international obligations formed by treaties, as well as the legal and constitutional requirements of their own jurisdictions. Any action to adequately deal with terrorism must observe a balance - it must be effective in deterring or punishing terroristic activity, while at the same time not infringing unreasonably on dissent, freedom of expression or other civil liberties. The necessity for such a balance has two rationales. First, the preservation of liberty has an intrinsic value of its own - democratic societies would undermine their own raison d'être if, in attempting to suppress terrorism, they so trench on their citizens' liberties as to deny those democratic values. There is also a practical rationale. Many terrorist acts are committed for the very purpose of destabilizing societies, by provoking an unmeasured or imprudent response. To overreact to terrorism is to play into its perpetrators' hands. Parliaments must be the initiators of reasoned and effective responses to political violence; but they must also be a brake on the passions and impulses to hasty and destructive action which terrorism may evoke.

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(1) The Resolution also affirms the principle of self-determination, in particular with respect to all peoples "under colonial and racist regimes and other forms of alien domination", and urges all nations to contribute to the progressive elimination of the causes of terrorism including "colonialism, racism and situations involving mass and flagrant violations of human rights and fundamental freedoms".



## PUNISHING TERRORISM

It is generally agreed that certain and severe punishment, although not the complete answer, can go a considerable way in reducing the impact of terrorism. Such punishment allows for incapacitation of the terrorist and his organization, and often may have the effect of deterring further acts of violence. Punishment also has a more diffuse effect - it can satisfy a perceived public need for retribution, and thereby ease the tensions and anxieties that terrorism tries to produce.

The criminal justice systems of most, if not all, sovereign states are presumably comprehensive enough to deal with those criminal acts which constitute terrorism. What has required concerted international cooperation, and implementation in the domestic laws of the international community, are measures which deal with issues not covered by that domestic law, or which have a transnational aspect. Several conventions have been entered into dealing with various aspects of terrorism, which have bound the signatories to take certain action. These conventions deal with four areas: civil aviation; diplomatic personnel and premises; hostage taking; and the protection of nuclear materials.

### A. Civil Aviation

Under the auspices of the International Civil Aviation Organization (of which virtually all of the countries in the United Nations are members) three conventions touching on terrorist activities and aviation have been formulated. The first, the Tokyo Convention<sup>(1)</sup>, was concluded in 1963, and entered into force in 1970 when it was ratified by the appropriate number of countries. By virtue of article 3 the following provisions apply:

1. The State of registration of an aircraft is competent to exercise jurisdiction over offences and acts committed on board.

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(1) The Tokyo Convention on Offences and Certain Other Acts Occurring on Board Aircraft, 1963; Canada Treaty Series 1970, No. 5.



2. Each Contracting State shall take such measures as may be necessary to establish its jurisdiction as the state of registration over offences committed on board aircraft registered in such state.
3. This Convention does not exclude any criminal jurisdiction exercised in accordance with national law.

Article 4 goes on to exclude the jurisdiction of a state which is not the state of registration except where the offence involved has some effect on that other state, its nationals, or its security. The Convention also gives the commander of an aircraft certain powers over persons committing or suspected of being about to commit an offence, and provides for the detention of such persons who are disembarked in contracting states. Signatories also agreed to take measure to restore control of aircraft to commanders who have lost it; and to take appropriate measures to facilitate the continued journey of passengers and the return of their property.

The Tokyo Convention did not create an obligation to extradite offenders, nor an obligation to prosecute them. It also specifically stipulated that no signatory would be required to take penal action in respect of offences of a "political nature or those based on racial or religious discrimination", except when the safety of the aircraft or of persons or property on board so requires.

Following a spate of hijackings in the late sixties, the Hague Convention<sup>(1)</sup> was formulated. Each contracting state agreed to make it an offence "punishable by severe penalties" to unlawfully by force, intimidation, or threat seize or exercise control over an aircraft. Further, each state is obliged to assert jurisdiction over the offence of "any other act of violence against passengers or crew", when the aircraft is registered in that state, or lands there with the offender still on board. (Article 4)

The Convention also dealt explicitly with extradition. The stipulated offence is deemed to be included as an extraditable offence in each state's extradition treaty with each other, or to be concluded with each other. In the absence of such a treaty, each state "may at its option consider this Convention as the legal basis for extradition in respect of

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(1) Convention for the Suppression of the Unlawful Seizure of Aircraft, 1970; Canada, Treaty Series 1972, No. 23.

the offence". However, no state is compelled to extradite if that would not be in keeping with state practice, i.e. "if a state refuses to extradite on the basis of the political nature of the offence, it cannot be compelled to do so."<sup>(1)</sup> But every contracting state is bound by the principle aut dedere, aut judicare - they must either extradite or prosecute. Article 7 states that where an offender is not extradited, the state is obliged "without exception whatsoever and whether or not the offence was committed in its territory, to submit the case to its competent authorities for the purpose of prosecution." Those authorities are also directed to deal with any potential prosecution in the same manner as they would the prosecution of any ordinary offence of a serious nature.

The latest agreement on civil aviation is the Montreal Convention of 1971<sup>(2)</sup> which constitutes, in effect, an extension of the Hague Convention. It sets out, in Article 1, a number of offences which contracting states undertake to punish by severe penalties. These include:

- Acts of violence against persons on board aircraft in flight that are likely to endanger the craft's safety.
- The destruction of an aircraft "in service"; or the damaging of an aircraft in such a way as to render it incapable of flight, or to endanger its safety.
- The placing of a substance on an aircraft that is likely to destroy it, render it incapable of flight, or damage it in such a way as to endanger its safety in flight.
- The destruction of air navigation facilities, or interference with such, when it is likely to endanger the safety of aircraft in flight.
- The communication of information known to be false, which endangers the safety of an aircraft in flight.

As with the other Conventions, the Montreal Convention contains stipulations as to jurisdiction, and the aut dedere, aut judicare

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(1) S. Williams and J.-G. Castel, Canadian Criminal Law - International and Transnational Aspects, Butterworths, Toronto: 1981, p. 216; Article 8.

(2) Convention for the Suppression of Unlawful Acts Against the Safety of Civil Aviation, 1971, Canada, Treaty Series 1973, No. 6.



principle. It also broke new ground by extending its application, in some circumstance, to aircraft "in service" (as opposed to in flight) which includes both "preflight preparation" and a period of 24 hours after any landing.

The foregoing civil aviation conventions are considered to be a qualified success on at least one aspect of terrorism. A large number of nations have committed themselves to severe treatment of terrorist acts directed at aircraft. Canada, in 1972, made extensive amendments to the Criminal Code to deal with hijacking and other offences concerning aircraft. A new offence was added, after the offence of piratical acts, to specifically penalize the seizure or the exercise of control over an aircraft, by force, threats or other intimidation, with the intent to confine or otherwise hold persons on the aircraft; or to cause it to deviate from its flight plan.<sup>(1)</sup> The offence is punishable by a maximum term of life imprisonment. A further new offence (s.76.2) dealt with activities that endanger the safety of aircraft in flight (such as assaults likely to endanger the craft's safety). Also prohibited are the placing of materials on aircraft that might render it incapable of flight, or unsafe while airborne; damage to or interference with navigation facilities; and endangering the safety of an aircraft in flight by the communication of false information. These offences are also punishable by life imprisonment. A third new section, punishable by up to 14 years, makes it an offence to bring aboard an aircraft an offensive weapon or explosive substance, without due authorization.

Section 6 of the Criminal Code, which deals with matters of jurisdiction, was also amended in 1972 to extend the extraterritorial jurisdiction of Canadian criminal courts. Offences in relation to aircraft registered in Canada, wherever committed, are deemed to have been committed in Canada. Further, ss. 76.1 and 76.2 are held to be punishable by Canadian courts if the offender is "found anywhere in Canada", regardless of whether the aircraft affected is registered here, and regardless of whether the offence occurred on Canadian territory, or elsewhere.

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(1) Section 76.1 of the Criminal Code.

The civil aviation conventions, and the domestic laws enacted pursuant to them, do have limitations. They do not apply to acts done within the confines of airports, frequent targets of political violence. "This is an obvious gap, bearing in mind the incidents involving the killing of persons in airport terminals."<sup>(1)</sup> But it may be that international actions may not be able to significantly supplement domestic criminal law or security measures at airports. Another limitation inherent in such conventions is, of course, the lack of sanction where a country refuses to live up to its obligations, either in law or in practice. Some countries have become safe havens for terrorists.

One relatively recent action to attempt to bring some pressure to bear on countries which fail to adequately deal with terrorists who endanger civil aviation was the Bonn Declaration of 1978. The leaders of the seven major industrialized nations of the free world sought to encourage extradition or prosecution of air pirates by the use of the termination of air services to and from the country in issue. The Declaration reads, in part, as follows:

... in cases where a country refuses extradition or prosecution of those who have hijacked an aircraft and/or do [sic] not return such aircraft, the heads of state and government are jointly resolved that their governments should take immediate action to cease all flights to that country.

At the same time, their governments will initiate action to halt all incoming flights from that country or from any country by the airlines of the country concerned. The heads of state and government urge other governments to join them in this commitment.<sup>(2)</sup>

The Parliament of Canada gave effect to the Declaration in 1981. The Prohibition of International Air Services Act<sup>(3)</sup> permits the Governor in Council to issue an order prohibiting air carriers from serving a state, and forbidding carriers from that state to fly over or land in

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(1) Williams (1981), p. 218.

(2) J.J. Busuttil, "The Bonn Declaration on International Terrorism", (1982) 31 International and Comparative Law Quarterly, 474, at p. 475.

(3) S.C. 1980-81-82-83, c. 61. In force July 31, 1981.



Canada, if the Secretary of State for External Affairs certifies that the state in issue is in default of its obligation to deal with hijackers or others who interfere with civil aviation. Failure to comply can result in a fine of up to \$25,000.<sup>(1)</sup>

## B. Diplomatic Personnel and Premises

In 1974 the United Nations promulgated a Convention on the Prevention of Crimes Against Internationally Protected Persons, Including Diplomatic Agents.<sup>(2)</sup> In many respects it is similar to the civil aviation conventions. It sets out a list of offences directed at "internationally protected persons", which includes heads of state and related figures, as well as any representative or official of a state who is "entitled pursuant to international law to special protection from any attack on his person, freedom or dignity, as well as members of his family forming part of his household."

The contracting states pledge to make the offences punishable by penalties which recognize their "grave nature". There are also stipulations as to jurisdiction, including Article 3(1)(b) pursuant to which states are said to have jurisdiction over their nationals who commit any of the offences, regardless of where the offence occurred. As in the aviation treaties, there are also provisions as to cooperation and the exchange of information; and as to extradition and prosecution.

In 1976, Canada amended the Criminal Code to reflect the Convention. A new section 381.1 was added, making it an indictable offence to make threats to do violence against "internationally protected persons" and premises occupied by them. Another new offence, s. 387.1, makes attacks upon the "official premises, private accommodation or means of transport" of such persons an indictable offence if the attack "is likely to endanger

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(1) The Bonn Declaration has been formally invoked once, against Afghanistan, in retaliation for that country's apparent complicity in, and refusal to punish, a hijacking of a Pakistani aircraft in 1981. It has also been speculated that fear of imposition of the Declaration was instrumental in South Africa's reconsideration of a decision not to prosecute several of its nationals who had hijacked an aircraft after an abortive coup in the Seychelles in December 1981. See Busuttill (1982) pp. 474-475.

(2) International Legal Materials, Volume 13, January 1974, p.41.

[their] life or liberty". Amendments were also made to define "internationally protected person" in the terms of the Convention, and to extend the jurisdiction of Canadian courts to deal with the new offences. Persons accused may be pursued if the offence was committed on a ship or aircraft registered in Canada; where the person is a Canadian citizen or is present in Canada; or where the victim exercises diplomatic functions on behalf of Canada.

### C. Hostage Taking

The 1979 Convention Against the Taking of Hostages<sup>(1)</sup> operates in much the same manner as the civil aviation and protection of diplomatic personnel treaties. The contracting states pledge to criminalize and attach serious penalties to the seizure, detention or the making of death threats to hostages in order to compel third parties (including states, international organizations, and natural or juridical persons)

to do or abstain from doing any act as an explicit or  
implicit condition for the release of the hostage ...  
(Article 1)

As with the other conventions, there are provisions as to jurisdiction, extradition and the obligation to prosecute, and as to cooperation and the exchange of information.

In Bill C-18, which came into force in December 1985, Parliament brought Canada's Criminal Code into compliance with the Convention. A new offence of hostage-taking has been added, as s. 247.1. In many respects the offence is similar to the existing offences of kidnapping and forcible confinement. It appears to have been added, making specific reference to the object of the hostage-taking (in terms similar to those in the Convention) in order to allow for the extra-territorial jurisdiction of Canadian courts over certain types of abduction having a political or international element. Amendments were also made to s. 6 of the Code, which deals with jurisdiction. Notable among the changes is one which gives Canadian courts jurisdiction over a hostage-taking committed outside of Canada where either the victim or the offender is a Canadian citizen.

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(1) International Legal Materials, Volume 18, November 1979, p. 1457.



#### D. Nuclear Materials

The member nations of the Atomic Energy Agency concluded the Convention on the Physical Protection of Nuclear Materials<sup>(1)</sup> in 1979. It deals with an ominous potential problem - the use of nuclear materials by those who have obtained them unlawfully. For several years there has been speculation as to whether it is possible for terrorists to construct and use some kind of nuclear weapon, or to otherwise use nuclear materials or facilities for their purposes. The preamble makes reference to the need to "avert the potential dangers posed by the unlawful taking and use of nuclear material", and to "adopt appropriate and effective measures to ensure the prevention, detection and punishment" of offences in relation to such material. The structure of the Convention is essentially similar to those dealing with, for example, civil aviation and hostage-taking on matters such as extradition, prosecution and jurisdiction. It also goes on to stipulate that each signatory "shall take appropriate steps within the framework of its national law and consistent with international law" to protect the transport of nuclear materials. In addition, each state pledges not to export nuclear materials unless it has received assurances as to the protection required. Canada and over 50 other countries are signatories.

In Bill C-18, no new offences dealing with nuclear materials were added to the Criminal Code. Instead, amendments are made to s. 6 of the Code which attempt to ensure that, if a court in another country is unwilling to prosecute with respect to offences in relation to nuclear materials such as theft, intimidation, or the making of threats, a Canadian court will be able to assert jurisdiction where there is some connection with Canada (based, for example, on the locus of the offence or the citizenship of the accused), notwithstanding that the offence did not take place on Canadian territory.

#### E. Further Action

The international community has made considerable progress in seeking uniformity among nations in the punishment of terrorism. The

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(1) International Legal Materials, Volume 18, November 1979, p. 1419.

Parliament of Canada has enacted into our criminal law new provisions reflecting our international obligations, which, at the same time, respect constitutional guarantees. For truly effective action against terrorists, what is needed is concerted and sustained effort in this area by all legislative bodies of the world. Punishment of terrorism, if it is to have any effect, must be prompt, thorough, and severe.

A considerable amount of discretion must reside in the executive branch of the world's governments, however, to ensure that persecution does not accompany prosecution of those who commit political violence. Extradition for terrorist acts is a case in point. Notwithstanding an almost universal revulsion for the hijacking of aircraft, for example, where that hijacking occurs in a political context many countries are reluctant to extradite for a variety of reasons. The final step in any extradition is a political decision. Thus, the role of a country's legislature is to ensure that there is a clear and comprehensible basis for a political decision not to extradite the perpetrator of a terrorist act. The ultimate decision is that of the executive, but it would seem that legislators should know or should seek to know why the ordinary processes of law are not applied in any particular case.

It has been noted that all of the Conventions described above include the principle that, if a state does not extradite a terrorist, it must prosecute him or her according to the usual practice in that state. In many countries, prosecutorial authorities are not to be under the direction of the government; and in Canada, the traditional position has been that it is the provincial governments which oversee criminal prosecution. In 1984, Parliament enacted, as part of the Canadian Security Intelligence Act,<sup>(1)</sup> the Security Offences Act which allows the federal Attorney General to commence, or intervene in, and take over proceedings for "security offences", which can include acts of terrorism.

It remains to be seen whether the international community has the inclination or ability to conclude a comprehensive treaty on terrorism. While there appears to be a new consensus in the United Nations on the desirability of combatting terrorism, problems of definition, and the inherent political nature of the subject, may militate against any

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(1) S.C. 1984, c. 21 (Par. V).



unified initiative. But there does seem to be some agreement on the illegitimacy of some tactics, and some targets, which could lead to further action on various aspects of the problem.

## PREVENTING TERRORISM

To date, the focus of international activity against terrorism, and the focus of consequent domestic law, has been on its punishment. Less has been done to try to address the prevention of terrorism, largely because it is much more difficult to achieve. While the existence of criminal sanctions against terroristic acts can give police and prosecutorial officials some insight into the operations of terrorists, and thus some degree of anticipation of their acts, their involvement is almost exclusively after the fact. If it were possible to secure a long-range appreciation of the aims and tactics of terrorist organizations and their members, it might be possible to make society's institutions, and innocent populations, more secure against the threat.

The prevention of terrorism, however, is not derived exclusively from specific efforts to anticipate and foreclose individual acts of violence. As the continuing dispute among member nations of the U.N. attests, there is a body of world opinion which holds that a significant amount of terrorism cannot be eradicated until its root causes are remedied. Legislators of the world may have a role in attempting to give voice to the legitimate grievances of some groups and individuals who turn to political violence, thus, perhaps, contributing to the resolution of those disputes. But it seems clear that there is also a growing accord among the international community that, no matter how just the cause, some forms of political violence are not to be tolerated.

The securing of advance information as to terrorist threats can be easily accomplished if the only interest to be satisfied is the prevention of terrorism. A state can endow its agents with broad power to put its citizens and others under surveillance, to monitor communications, and to intrude into their freedom of action. While such an approach would

undoubtedly have an impact on terrorism, it would also potentially compromise a state's commitment to civil liberties and democratic values, thereby constituting an implicit surrender to terrorism. Further, in a practical sense, "preventing" terrorism in this way would be very costly.

Intelligence gathering about terrorism must strike a balance between effectiveness, and protection of privacy and liberty. Canada has recently attempted to achieve this balance in the enactment of the Canadian Security Intelligence Service Act.<sup>(1)</sup> That statute established a new civilian Security Intelligence Service, replacing the Security Service of the RCMP. It gave, for the first time, a statutory mandate to govern the activities of security personnel, which is found at section 2 of the Act. It consists of a definition of "threats to the security of Canada" in respect of which the Service is permitted to investigate and gather information. The definition reads as follows:

"threats to the security of Canada" means

(a) espionage or sabotage that is against Canada or is detrimental to the interests of Canada or activities directed toward or in support of such espionage or sabotage,

(b) foreign influenced activities within or relating to Canada that are detrimental to the interests of Canada and are clandestine or deceptive or involve a threat to any person,

(c) activities within or relating to Canada directed toward or in support of the threat or use of acts of serious violence against persons or property for the purpose of achieving a political objective within Canada or a foreign state, and

(d) activities directed toward undermining by covert unlawful acts, or directed toward or intended ultimately to lead to the destruction or overthrow by violence of, the constitutionally established system of government in Canada,

but does not include lawful advocacy, protest or dissent, unless carried on in conjunction with any of the activities referred to in paragraphs (a) to (d).

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(1) S.C. 1984 c. 21.



Pursuant to this definition, the CSIS has the power to investigate a number of activities which could have terrorist elements. In particular, paragraph (c), which relates to politically-inspired violence, allows the Service to investigate virtually any perceived terrorist threat.

The scope of such investigation can be very broad. Pursuant to s. 21 of the Act, the Service can be empowered to use virtually any investigative technique from mere surveillance, to surreptitious entry of premises, wiretapping, or the opening of mail. Many of these intrusive techniques are available for security personnel for the first time (e.g. mail opening and surreptitious entry). Based on information provided by the CSIS, the Government of Canada may be in a better position to deal with potential terrorist threats. This may reduce the number of such threats which can only be dealt with after the fact.

In enacting the CSIS Act, Parliament has also attempted to impose some control on the Service which was absent from the RCMP's security branch. Intrusive investigative techniques are available only on the basis of a warrant issued by a justice of the federal court, who must assess whether a warrant is needed to deal with a security threat. Previously, a warrant to authorize the interception of communications in security matters could be issued by the Solicitor General alone. Further, the Act provides for an Inspector General to monitor the Service's operations, who is answerable to a Review Committee composed of members of the Privy Council who no longer sit in Parliament. This Committee reports to Parliament yearly, or as they see fit, on the operations of the CSIS. During the debate over the Act, there was considerable agitation for a direct Parliamentary role in supervising the Service; but this was rejected by the government. Notwithstanding this lack of direct supervision, Canada's Parliament will continue to play a part in security matters, attempting to ensure that the country's security concerns are met, but in a legitimate fashion. The degree to which the new Service can prevent (or at least give advance warning) of terrorism will depend on the skill which it exercises its considerable powers.

Effective prevention of terrorism can depend on two principal factors - anticipation and thoroughness. Anticipation has reference to the ability to foresee and foreclose areas of terrorist activity. If

airplanes are made secure, and airports less subject to attack, terrorism seeks out the next weakest area in which society can be disrupted. The difficult task facing world governments is to determine where that vulnerability is. Some, for example, believe that the next terrorist threat will involve the use of chemical or biological weapons. Accordingly, it is submitted that legislative bodies around the world should turn their attention to the control and regulation of such substances, while at the same time seeking to ensure that commerce and research are not unduly hampered.

Thoroughness has reference to vigilant and complete enforcement of laws and fulfilment of agreements and commitments against terrorism. For example, most countries have in place a system for the control of security at airports. But through lack of resources, or lack of enforcement, such security systems can be penetrated and compromised. If a country is truly concerned about making civil aviation as safe as possible from terrorist threats, that concern must be evidenced by thorough enforcement. Legislators can play a key role in ensuring this requisite thoroughness by bringing the executive branch of their governments to task for default in these areas; and by ensuring that adequate resources are applied to the problem, and are effectively applied.

## CONCLUSION

To a significant degree, the power of individual states, or individual legislatures, to combat terrorism is limited. A large element of terrorist activity is international in nature, and requires a unified approach by many countries. What is required, thus, is a uniform adaptation of domestic laws to international standards. Such uniformity must also respect the values and constitutional requirements of each individual society. Much has been accomplished in the punishment of terrorism, notwithstanding disagreement in the international community as to a definition of the phenomenon. What is needed is more cooperation among nations, so that concrete actions can be taken to prevent terrorist acts. Recent developments have shown that a new consensus on some aspects of terrorism may be emerging, which could facilitate this cooperation.



## APPENDIX

### DRAFT RESOLUTION OF THE GENERAL ASSEMBLY OF THE UNITED NATIONS ON TERRORISM (December 7, 1985)

Measures to prevent international terrorism which endangers or takes innocent human lives or jeopardizes fundamental freedoms and study of the underlying causes of those forms of terrorism and acts of violence which lie in misery, frustration, grievance and despair and which cause some people to sacrifice human lives including their own, in an attempt to effect radical changes

#### The General Assembly,

Recalling its resolutions 3034 (XXVII) of 18 December 1972, 31/102 of 15 December 1976, 32/147 of 16 December 1977, 34/145 of 17 December 1979, 36/109 of 10 December 1981 and 38/130 of 19 December 1983,

Recalling also the Declaration on Principles of International Law concerning Friendly Relations and Co-operation among States in accordance with the Charter of the United Nations, 1/ the Declaration on the Strengthening of International Security, 2/ the Definition of Aggression 3/ and relevant instruments on international humanitarian law applicable in armed conflict,

Further recalling the existing international conventions relating to various aspects of the problem of international terrorism, inter alia, the Convention on Offences and Certain Other Acts Committed on Board Aircraft, signed at Tokyo on 14 September 1963, the Convention for the Suppression of Unlawful Seizure of Aircraft, signed at The Hague on 16 December 1970, the Convention for the Suppression of Unlawful Acts against the Safety of Civil Aviation, signed at Montreal on 23 September 1971, the Convention on the Prevention and Punishment of Crimes against Internationally Protected Persons,

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1/ Resolution 2625 (XXV), annex.

2/ Resolution 2734 (XXV).

3/ Resolution 3314 (XXIX), annex.

including Diplomatic Agents, 4/ concluded at New York on 14 December 1973 and the International Convention against the Taking of Hostages, 5/ concluded at New York on 17 December 1979,

Deeply concerned about the world-wide escalation of acts of terrorism in all its forms, which endanger or take innocent human lives, jeopardize fundamental freedoms and seriously impair the dignity of human beings,

Taking note of the deep concern and condemnation of all acts of international terrorism expressed by the Security Council and the Secretary-General,

Convinced of the importance of expanding and improving international co-operation among States, on a bilateral and multilateral basis, which will contribute to the elimination of acts of international terrorism and their underlying causes and to the prevention and elimination of this criminal scourge,

Reaffirming the principle of self-determination of peoples as enshrined in the Charter of the United Nations,

Reaffirming also the inalienable right to self-determination and independence of all peoples under colonial and racist régimes and other forms of alien domination, and upholding the legitimacy of their struggle, in particular the struggle of national liberation movements, in accordance with the purposes and principles of the Charter and of the Declaration on Principles of International Law concerning Friendly Relations and Co-operation among States in accordance with the Charter of the United Nations,

Mindful of the necessity of maintaining and safeguarding the basic rights of the individual in accordance with the relevant international human rights instruments and generally accepted international standards,

Convinced of the importance of the observance by States of their obligations under the relevant international conventions to ensure that appropriate law enforcement measures are taken in connection with the offences addressed in those conventions,

Expressing its concern that in recent years terrorism has taken on forms that have an increasingly deleterious effect on international relations, which may jeopardize the very territorial integrity and security of States,

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4/ Resolution 3166 (XXVIII).

5/ Resolution 34/146.



Taking note of the report of the Secretary-General (A/40/445 and Add.1-2), 6/

1. Unequivocally condemns, as criminal, all acts, methods and practices of terrorism wherever and by whomever committed, including those which jeopardize friendly relations among States and their security;

2. Deeply deplores the loss of innocent human lives which results from such acts of terrorism;

3. Further deplores the pernicious impact of acts of international terrorism on relations of co-operation among States, including co-operation for development;

4. Appeals to all States that have not yet done so to consider becoming party to the existing international conventions relating to various aspects of international terrorism;

5. Invites all States to take all appropriate measures at the national level with a view to the speedy and final elimination of the problem of international terrorism, such as the harmonization of domestic legislation with existing international conventions, the fulfilment of assumed international obligations, and the prevention of the preparation and organization in their respective territories of acts directed against other States;

6. Calls upon all States to fulfil their obligations under international law to refrain from organizing, instigating, assisting or participating in terrorist acts in other States, or acquiescing in activities within their territory directed towards the commission of such acts;

7. Urges all States not to allow any circumstances to obstruct the application of appropriate law enforcement measures provided for in the relevant conventions to which they are party to persons who commit acts of international terrorism covered by those conventions;

8. Further urges all States to co-operate with one another more closely, especially through the exchange of relevant information concerning the prevention and combating of terrorism, apprehension and prosecution or extradition of the perpetrators of such acts, the conclusion of special treaties and/or the incorporation into appropriate bilateral treaties of special clauses, in particular regarding the extradition or prosecution of terrorists;

9. Urges all States, unilaterally and in co-operation with other States, as well as relevant United Nations organs, to contribute to the

progressive elimination of the causes underlying international terrorism and to pay special attention to all situations, including, inter alia, colonialism, racism and situations involving mass and flagrant violations of human rights and fundamental freedoms and those involving alien occupation, that may give rise to international terrorism and may endanger international peace and security;

10. Calls upon all States to observe and implement the recommendations of the Ad Hoc Committee on International Terrorism contained in its report to the General Assembly at its thirty-fourth session; 7/

11. Calls upon all States to take all appropriate measures as recommended by the International Civil Aviation Organization and as set forth in relevant international conventions to prevent terrorist attacks against civil aviation transport and other forms of public transport;

12. Encourages the International Civil Aviation Organization to continue its efforts aimed at promoting universal acceptance of and strict compliance with the international air security conventions;

13. Requests the International Maritime Organization to study the problem of terrorism aboard or against ships with a view to making recommendations on appropriate measures;

14. Requests the Secretary-General to follow up, as appropriate, the implementation of the present resolution and to submit a report to the General Assembly at its forty-second session;

15. Decides to include the item in the provisional agenda of its forty-second session.

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